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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of) MM Docket No. 96-184¹
)
CONCORD AREA)
BROADCASTING, INC.)
)
Order to Show Cause Why)
License for Station KRHT(AM))
Concord, CA)
Should Not Be Revoked)

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To: Administrative Law Judge
John M. Frysiak

MASS MEDIA BUREAU'S COMMENTS ON MOTION FOR SUMMARY DECISION

1. On September 20, 1996, Concord Area Broadcasting, Inc. ("Concord") filed its Motion for Summary Decision ("Motion") in this case. The Mass Media Bureau ("Bureau") hereby supports Concord's motion.²

2. Concord's motion is filed pursuant to Section 1.251 of the Commission's Rules. This Section requires, inter alia, that the moving party demonstrate, by supporting affidavit or by other materials subject to consideration by the Presiding Judge, that there is no genuine issue of fact for determination at the hearing. In the instant case, Concord indicates that it did

¹By Erratum released September 9, 1996, the Commission changed the DA number in this proceeding from DA 96-184 to DA 96-1466.

²By Order released September 27, 1996, the Presiding Judge, in response to the Bureau's motion demonstrating good cause, extended the time for the filing of these Comments until October 10, 1996.

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not return Station KRHT(AM) to the air during the February 1993 through August 1996 period because Concord, after losing the lease for its transmitter site,³ expected to migrate to the AM expanded band, and thus suspended its search for a site large enough to support the directional antenna system needed for its existing-band construction permit. An award of an expanded-band construction permit would allow Concord to employ a non-directionalized antenna system, utilizing a smaller site. Concord correctly observes that the lengthy process attending the Commission's finalizing the expanded-band allocation was not a circumstance within Concord's control. Given these factors, the Bureau submits that Concord has established that its delay in returning the station to the air was reasonable.⁴

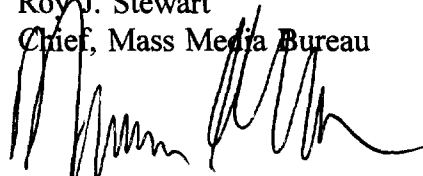
3. In view of the foregoing, no issue warranting hearing on the matter of revocation of the station's license, or possible violation of Sections 73.1740 and/or 73.1750 of the Commission's Rules, any longer exists. The Bureau therefore supports Concord's motion and joins in its request that the instant proceeding be terminated. Accordingly, the Presiding

³In support of its original STA request on February 26, 1993, Concord submitted the February 18, 1993 eviction notice it received from counsel for its landlord. After acquiring the property through foreclosure, the new owners refused to extend a lease for the use of radio towers on their site.

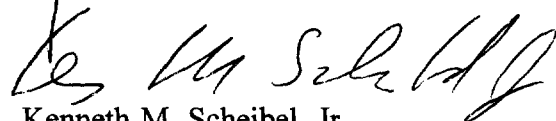
⁴ We note that with the enactment of the Telecommunications Act of 1996, Section 403(l) of the Telecommunications Act of 1996, 47 U.S.C. Sec. 312(g), Concord must restore KRHT(AM)'s service by February 8, 1997, or lose its license automatically. Although Concord's efforts have not yet resulted in the actual filing of a modification application, it has affirmed in its Motion that an appropriate modification application will be filed shortly, and that its construction schedule would permit station operations to be resumed prior to February 8, 1997. See Motion, Exhibit A. We also note that while the Commission has announced expedited procedures for the applications of silent stations attempting to return to the air, under existing policy, the Bureau will not process a modification application filed post-designation. See In the Matter of Southwestern Broadcasting Corporation, *supra*, citing Bureau's Memorandum of Law and Policy interpreting Procedures Announced for Expedited Processing of Applications Filed By Silent Broadcast Stations (DA 96-818), released May 22, 1996. Consequently, the processing of any modification application filed by Concord will be withheld until its Motion for Summary Decision is granted.

Judge should grant Concord's motion for summary decision in the instant case.

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau



Norman Goldstein
Chief, Complaints &
Political Programming Branch



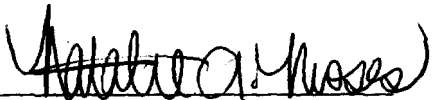
Kenneth M. Scheibel, Jr.
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Federal Communications Commission
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October 10, 1996

CERTIFICATE OF SERVICE

Natalie Moses, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 10th day of October 1996, sent by regular United States mail, U.S. Government frank, copies of the foregoing "**Mass Media Bureau's Comments On Motion for Summary Decision**" to:

Concord Area Broadcasting, Inc.
c/o David Tillotson, Esq.
4606 Charleston Terrace, N.W.
Washington, DC 20007-1911



Natalie Moses